



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 19516630

Date: DEC. 6, 2021

**Appeal of Texas Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not established that he met the second and third prongs under the analytical framework set forth in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> As a result, the Director determined that the Petitioner had not demonstrated that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

*Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will sustain the appeal.<sup>4</sup>

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

<sup>2</sup> *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

<sup>3</sup> *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

## I. ANALYSIS

The Petitioner is currently a research associate<sup>5</sup> at the University [redacted] in the field of electrical and computer engineering. His research “focuses on robotics [redacted] systems, and applied [redacted]” Specifically, he is investigating 1) the use of [redacted] miniature [redacted] agents to treat cardiovascular disease through a grant from the National Science Foundation, 2) the uses of small, floating [redacted] devices which transmit information [redacted] to protect a [redacted] 3) new methods to control [redacted] drones, and 4) a new [redacted] system for the [redacted] of underwater robots to [redacted]. The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree<sup>6</sup> and meets the first prong under the *Dhanasar* analysis and we agree.

The Petitioner, through counsel, argues on appeal that the Director did not properly analyze his case in comparison to the standard set by *Dhanasar*. The Petitioner asserts that the Director is legally required to compare the impact of his work with that of Dr. Dhanasar and cites to the concept of precedent decisions in support. While we agree that *Dhanasar* is a precedent decision and further acknowledge the concept of precedent decisions and their controlling nature, the Petitioner has cited no legal authority for a one-to-one comparison of two petitioners operating in different fields with different proposed endeavors. *Dhanasar* establishes an analytical framework to examine national interest waiver cases, but it does not mandate, or even suggest, that a side-by-side comparison of individual petitioners and endeavors is required. The Petitioner misunderstands the nature of precedent decisions when he asserts that approvals are required for any petitioner with more impact than Dr. Dhanasar.

Notwithstanding the above, for the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the remaining two prongs of the *Dhanasar* analysis.

### A. Well Positioned to Advance the Proposed Endeavor

The second prong of the *Dhanasar* analysis focuses on the Petitioner. To determine whether he is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The record includes copies of the Petitioner’s advanced degrees, numerous cited articles (many of which list him as the first author), evidence of the receipt of grants, and reference letters from researchers and medical professionals that discuss the importance and practical applications of his research projects, and the advances he has made. For example, the letters indicate that the Petitioner [redacted], [redacted] [redacted] which “allows a

<sup>5</sup> At the time of filing, the Petitioner was a post-doctoral fellow.

<sup>6</sup> The Petitioner holds the foreign equivalent of a Ph.D. in electrical engineering and a master’s degree in electric energy. See 8 C.F.R. § 204.5(k)(3)(i)(A).

drastic increase in the strength of the [ ] produced,” and [ ]

The Petitioner’s experience and expertise, published work and its impact upon other researchers, record of success, and progress in advancing his research projects establish that he is well positioned to advance his proposed endeavor. We therefore conclude that he satisfies the second prong of the *Dhanasar* framework.

#### B. Balancing Factors to Determine Waiver’s Benefit to the United States

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Not only does the Petitioner possess considerable experience and expertise, but the record also demonstrates the widespread benefits associated with research developments in his field and their broad application. The Petitioner has documented his past successes in advancing research and providing influential research findings. Based on the Petitioner’s track record of successful research and the significance of his ongoing studies, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

## II. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for, and otherwise merits, a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.